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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,245	07/31/2000	MANFRED GERBER	ATM-2174	9769
7590 05/18/2004				
VIRGIL H MARSH FISHER CHRISTEN & SABOL 1725 K STREET NW SUITE 1401 WASHINGTON, DC 20036			EXAMINER BRUENJES, CHRISTOPHER P	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/601,245

Applicant(s)

GERBER ET AL.

Examiner

Christopher P Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20000925
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 4, 2004 has been entered.

WITHDRAWN REJECTIONS

2. The objection to claim 15 of record in the Office Action mailed November 10, 2003, Pages 3 Paragraph 6, has been withdrawn due to Applicant's amendment in the Paper filed February 4, 2004.

3. The 35 U.S.C. 112 rejections of claims 15-22 of record in the Office Action mailed November 10, 2003, Pages 3-4 Paragraph 7, have been withdrawn due to Applicant's amendments in the Paper filed February 4, 2004.

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4. The 35 U.S.C. 102 rejections of claims 15-16 and 22 as anticipated by Bussard of record in the Office Action mailed November 10, 2003, Pages 4-5 Paragraph 6, have been withdrawn due to Applicant's amendments in the Paper filed February 4, 2004.

5. The 35 U.S.C. 103 rejections of claims 17-21 over Bussard of record in the Office Action mailed November 10, 2003, Pages 6-9 Paragraph 7, have been withdrawn due to Applicant's amendments in the Paper filed February 4, 2004.

NEW REJECTIONS

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 15-16 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamaguchi et al (USPN 5,200,253).

Yamaguchi et al anticipate a tube packaging laminate (Figures 16 and 17) having an appearance similar to a hologram.

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The tube packaging laminate consists of a multilayer material having a non-adhesive functional layer or sealant layer (reference number 116, Figure 24 or reference number 56, Figure 14) of polyethylene or polypropylene (col.11, 1.6-12) and a thickness of 10 to 80 micrometers (col.11, 1.16-17). The laminate further contains a lacquer coating (reference number 115, Figure 24) to insure a better adhesive between the metal layer and the functional layer (col.18, 1.4-7). The metal layer (reference number 114, Figure 24) is made of aluminum (col.17, 1.53-55) and has an embossed design completely or partly over the surface of a damask pattern or small worm design (Figure 24). The laminate further contains a multi-layered plastic layer which is transparent at least in some regions made from a polypropylene embossed layer (reference number 112, Figure 24) and a polyethylene film having a thickness of 40 micrometers extruded onto the polypropylene (col.17, 1.1-20), which because of the extrusion of the polyethylene film a layer of melt extrudate of polyethylene is inherently formed between the polypropylene and polyethylene layers. The plastic film may also optionally have a printing pattern on one side (Figures 22 and 23).

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaguchi et al (USPN 5,200,253).

Yamaguchi teach all that is claimed in claims 15-22 as shown above, except the thickness of the lacquer, metal foil, and melt extrudate layers. One of ordinary skill in the art would have recognized that selection of the thickness of the layers would be accomplished through routine experimentation

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depending on the intended end result of the tube packaging laminate.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to select the thickness of the lacquer, metal foil and extrudate layers of Yamaguchi within the claimed ranges, in order to form a desired wall thickness for the tube packaging, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

8. Claims 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Touhsaent (USPN 6,013,353) in view of Kay (USPN 5,851,615).

Touhsaent teaches a packaging laminate which is used to overwrap food and non-food products in the shape of a tube (see abstract). The laminate consists of a multilayered material having a layer structure of at least one functional layer of plastic as described in Touhsaent as a low temperature sealable coating, the function being a sealable layer. The functional layer contains at least one polyethylene (col.1, 1.60-65). The non-adhesive functional layer also contains a lacquer coating (col.2, 1.8-14). The laminate further consists of a metal foil

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or metal deposit layer (Figure 1) composed of aluminum (col.4, 1.26-30). On the opposite side of the metal deposit layer from the low temperature sealable coating is a multi-layered plastic layer comprising surface treated polymer skin layer, melt extrudate, and a polymer core layer. The polymer core layer is a non-adhesive film containing polyethylene (col.2, 1.40-42). The skin layer is also made from polyethylene (col.3, 1.24-28) and is extruded onto the core layer (col.3, 1.10-12). Therefore, the where the core layer and skin layer meet is a melt extrudate of polyethylene caused by extruding the polyethylene onto the core layer. Optionally a printed ink patten may be applied to the coated or uncoated surface opposite the sealable coating layer of the film (col.2, 1.8-14).

Touhsaent fail to explicitly teach having an embossed design over whole or part of the surface of the metal foil layer. However, Kay teaches that a surface relief structure is embossed into a lacquer layer (col.3, 1.28-35), which has a metal deposit layer of aluminum coated on the lacquer layer (col.3, 1.5-12), in order to generate an optically variable light effect such as a regular diffraction grating or a mosaic of diffracting gratings, such as a damask pattern or small worm design (col.3, 1.5-21), in order to render the packaging film tamperproof (see abstract). One of ordinary skill in the art

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would have recognized that metallized packaging films have an embossed design over whole or part of the surface of the metal foil layer, in order to render the packaging film tamperproof, as taught by Kay.

Regarding the thickness of the individual layers in claims 17 and 21, one of ordinary skill in the art would have recognized that the optimum thickness for the layers of the laminate would be determined through routine experimentation depending on the intended end result of the laminate.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to form the metal foil layer of Touhsaent with a embossed design over the whole or part of the surface, in order to render the packaging film tamperproof, as taught by Kay.

ANSWERS TO APPLICANT'S ARGUMENTS

9. Applicant's arguments regarding the 35 U.S.C. 112 rejections and the claim objection of record have been considered but are moot since the rejections have been withdrawn.

10. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 15-16 and 22 as anticipated by Bussard have

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been considered but are moot since the rejections have been withdrawn.

11. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 17-21 over Bussard have been considered but are moot since the rejections have been withdrawn.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Abrams (USPN 6,090,471); Sander (USPN 4,629,647); Reinhart (USPN 5,714,231).

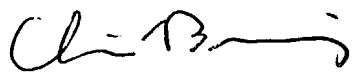
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB 
May 11, 2004


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

5/14/04